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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,522	07/16/2003	Jimmie L. Stallings	STA515-00/99336A	9005
24118	7590	06/10/2004	EXAMINER	
HEAD, JOHNSON & KACHIGIAN 228 W 17TH PLACE TULSA, OK 74119			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,522

Applicant(s)

STALLINGS, JIMMIE L.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,6 and 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7 and 8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/16/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - Figs. 1, 1A, & 5; Species II - Figs. 2, 2A, & 3; and Species III - Fig. 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 4, 7, 8, 12, and 13 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Allen Bennett on Wednesday, June 2, 2004 a provisional election was made without traverse to prosecute the invention of Species I, claims 1, 2, 4, 7, and 8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 5, 6, and 9-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 2, the phrase "50 psig to about 150 psig" renders the claim vague and indefinite since in claim 1, the phrase "75 psig to about 150 psig" was previously set forth.

In regard to claim 8, the phrase "is generally regarded as a propellant alternative to chlorofluorocarbon and is chemically represented as 1, 1, 1, 2 tetrafluorethane"

renders the claim vague and indefinite. The propellant should be simply recited as "wherein said propellant comprises 1, 1, 1, 2 tetrafluorethane".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4, 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson 5,309,669 in view of Diamond et al. 5,211,317 and Akehurst et al. 5,817,293 or Wells et al. 5,765,601.

Jackson discloses a method of insect eradication comprising providing a canister (aerosol can or other pressurized canister 390) with a pressurized gas propellant with a pre-use internal pressure sufficient to introduce essentially all of the gas into the internal portion of an invaded structure (building); and inserting a gas introduction nozzle (394) provided with the canister into an entrance or exiting insect bore (aperture in wall 410 and also wall cavity area 420) in a manner which displaces (with the help of user) a valve mechanism (398) connected to the nozzle and the canister causing the propellant to enter the internal portion of the invaded structure (see Fig. 14) and displace an insect (see Fig. 14 and positions of insects which are different from the time before spraying), but Jackson does not disclose providing a canister with a pre-use internal pressure within the range of 75 psig to about 150 psig. Diamond et al. discloses a pre-use internal

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pressure of air being about 75 psig to about 150 psig (see cols. 4 & 5). It would have been obvious to a person of ordinary skill in the art to modify the canister of Jackson such that it has a pre-use internal pressure of about 75 psig to about 150 psig in view of Diamond et al. in order to provide enough propellant to allow the can to be fully emptied yet also provide the gas at a safe pressure which will not cause the canister to distort or burst.

Jackson and Diamond et al. disclose the use of air, carbon dioxide, nitrous oxide, and nitrogen as gas propellants, but do not disclose the use of a fluorocarbon propellant. Akehurst et al. and Wells et al. disclose the use of a fluorocarbon propellant in the form of 1,1,1,2-tetrafluoroethane. It would have been obvious to a person of ordinary skill in the art to substitute the gas propellant such as air of Jackson and Diamond et al. for the fluorocarbon propellant in the form of 1,1,1,2-tetrafluoroethane of Akehurst et al. or Wells et al. in order to provide an alternative gas propellant to meet the user's needs that is also non-flammable and non-ozone depleting.

7. Claims 4, 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. 5,211,317 in view of Akehurst et al. 5,817,293 or Wells et al. 5,765,601.

Diamond et al. discloses a canister (12) with a pressurized gas propellant (air) therein with a pre-use internal pressure of about 75 psig to about 150 psig (recommended initial compressed gas pressures for the aerosol can are in the range of 90-140 psig which can increase to a range of 100-160 psig); a gas propellant operational valve (40) connecting the canister with a gas introduction nozzle (96, 104), and the use of air, carbon dioxide, nitrous oxide, and nitrogen as gas propellants, but

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does not disclose the use of a fluorocarbon propellant. Akehurst et al. and Wells et al. disclose the use of a fluorocarbon propellant in the form of 1,1,1,2-tetrafluoroethane. It would have been obvious to a person of ordinary skill in the art to substitute the gas propellant such as air of Diamond et al. for the fluorocarbon propellant in the form of 1,1,1,2-tetrafluoroethane of Akehurst et al. or Wells et al. in order to provide an alternative gas propellant to meet the user's needs that is also non-flammable and non-ozone depleting.

8. Claims 4, 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Pat No. 4236718 to Naber in view of Diamond et al. 5,211,317 and Akehurst et al. 5,817,293 or Wells et al. 5,765,601.

Naber discloses a canister (12) with a pressurized gas propellant (air) therein with a pre-use internal pressure; a gas propellant operational valve (15) connecting the canister with a gas introduction nozzle (17), but does not disclose a pre-use internal pressure of about 75 psig to about 150 psig. Diamond et al. discloses a pre-use internal pressure of air being about 75 psig to about 150 psig (see cols. 4 & 5). It would have been obvious to a person of ordinary skill in the art to modify the canister of Naber such that it has a pre-use internal pressure of about 75 psig to about 150 psig in view of Diamond et al. in order to provide enough propellant to allow the can to be fully emptied yet also provide the gas at a safe pressure which will not cause the canister to distort or burst.

Naber and Diamond et al. do not disclose the use of a fluorocarbon propellant. Akehurst et al. and Wells et al. disclose the use of a fluorocarbon propellant in the form

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of 1,1,1,2-tetrafluoroethane. It would have been obvious to a person of ordinary skill in the art to substitute the gas propellant such as air of Naber and Diamond et al. for the fluorocarbon propellant in the form of 1,1,1,2-tetrafluoroethane of Akehurst et al. or Wells et al. in order to provide an alternative gas propellant to meet the user's needs that is also non-flammable and non-ozone depleting.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA